

No. 12843

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United States  
Court of Appeals  
for the Ninth Circuit.

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ILENE CHARLES, also Known as ARLENE  
CHARLES,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

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Transcript of Record

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Appeal from the District Court of the United States  
for the Territory of Hawaii.

FILED

MAY 17 1915

PAUL H. O'BRIEN

CLERK



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS  
OF RECORD

For the Plaintiff, United States of America,  
UNITED STATES DISTRICT ATTORNEY,  
Federal Building,  
Honolulu, T. H.

For the Defendant, Ilene Charles,  
E. J. BOTTS, ESQ.,  
Stangenwald Building,  
Honolulu, T. H.





In the United States District Court  
For the District of Hawaii

Cr. No. 10,386

(26 U. S. C. 2553(a))

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ILENE CHARLES, also known as ARLENE  
CHARLES,

Defendant.

### INFORMATION

The United States Attorney Charges:

That on or about the 21st day of September, 1950, in the City and County of Honolulu, Territory of Hawaii, and within the jurisdiction of this Court, Ilene Charles, also known as Arlene Charles, did knowingly, wilfully, unlawfully and feloniously purchase a salt compound and derivative of opium, to-wit, 5 capsules each containing heroin, which heroin was not then and there in the original stamped package and was not from the original stamped package, in violation of Section 2553(a), Title 26, United States Code.

Dated at Honolulu, T. H., this 29th day of December, 1950.

RAY J. O'BRIEN,  
United States Attorney,  
District of Hawaii.

By /s/ NAT RICHARDSON, JR.,

HOWARD K. HODDICK,  
Assistant United States Attorney,  
District of Hawaii.

[Endorsed]: Filed December 29, 1950.

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【Title of District Court and Cause.】

MINUTES OF FRIDAY, JANUARY 5, 1951

On this day came Mr. Nat Richardson, Jr., Assistant United States District Attorney, and also came the defendant herein with Mr. E. J. Botts, her counsel. This case was called for trial.

Oral waiver of trial by jury was made by Mr. Botts.

Opening statement was made by Mr. Richardson.

At 10:10 a.m., Mr. Wm. K. Wells, Acting District Supervisor, Narcotic Bureau, District of Hawaii, was called and sworn and testified on behalf of the United States.

Copy of Report of property purchased or seized under narcotic and marihuana laws was admitted in evidence as United States Exhibit "A," marked and ordered filed.

At 10:17 a.m., Mr. Lowell Cain, Honolulu Police Department Officer, was called and sworn and testified on behalf of the United States.

It was stipulated by respective counsel as to the testimony of Honolulu Police Department Officer Andrade if he were called and sworn to testify herein.

At 10:20 a.m., the government rested, and the defendant also rested.

Argument was then had by Mr. Botts.

Upon the evidence adduced, the Court found the defendant guilty as charged in the Information and adjudged the defendant guilty.

The Court then ordered the defendant committed to prison for a period of one year and one day. Exceptions to the Court's findings were noted by Mr. Botts, and notice of appeal was given. Bond on appeal was set in the sum of \$2,500.00.

Upon request of Mr. Botts, mittimus was ordered stayed to January 8, 1951.

The Judgment and Commitment reads as follows:

“Cr. No. 10,386

“(26 U. S. C. Sec. 2553(a))

“UNITED STATES OF AMERICA,

vs.

“ILENE CHARLES, also known as ARLENE CHARLES.

“On this 5th day of January, 1951, came the attorney for the government and the defendant appeared in person and by counsel, E. J. Botts, Esquire.

“It Is Adjudged that the defendant has been

convicted upon her plea of not guilty and a finding of guilty by the court; of the offense of knowingly, wilfully, unlawfully and feloniously purchasing a salt compound and derivative of opium, to wit, 5 capsules each containing heroin, which heroin was not then and there in the original stamped package and was not from the original stamped package, in violation of Section 2553(a), Title 26, United States Code, as charged and the court having asked the defendant whether she has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

“It Is Adjudged that the defendant is guilty as charged and convicted.

“It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of one (1) year and one (1) day.

“It Is Ordered that mittimus is stayed until 12:00 o’clock noon on January 8, 1951.

“It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

“/s/ D. E. METZGER,

“United States District Judge.

“/s/ WM. F. THOMPSON, JR.,

“Clerk.”

[Title of District Court and Cause.]

NOTICE OF APPEAL

Name and address of appellant: Ilene Charles,  
1467 Kokea Street, Honolulu, Hawaii.

Name and address of appellant's attorney: E. J.  
Botts, Stangenwald Building, Honolulu, Hawaii.

Offense: Violation of Section 2553(a), Title 26,  
United States Code.

Judgment and order: Defendant was tried, con-  
victed, and sentenced on January 5, 1951, and sen-  
tenced to one year and one day in Oahu Prison.

Bail: Defendant has filed appearance bond in  
the sum of Two Thousand Five Hundred Dollars  
(\$2,500.00).

I, the above-named appellant, hereby appeal to  
the United States Court of Appeals for the Ninth  
Circuit from the above-stated judgment.

Pursuant to Rule V, I hereby serve notice that I  
do not elect to enter upon the service of the sentence  
pending appeal.

Dated: Honolulu, Hawaii, January 8, 1951.

ILENE CHARLES,

By /s/ E. J. BOTTS,

Appellant's Attorney.

[Endorsed]: Filed January 8, 1951.

In the United States District Court  
For the Territory of Hawaii

Criminal No. 10,386

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ILENE CHARLES, also known as ARLENE  
CHARLES,

Defendant.

### TRANSCRIPT OF PROCEEDINGS

In the above-entitled matter, held in the U. S.  
District Court, Honolulu, T. H., on January 5, 1951.  
Before: Hon. Delbert E. Metzger, Judge.

Appearances:

NAT RICHARDSON, JR., ESQ.,

Assistant U. S. Attorney,

Appearing for Plaintiff;

EBERT J. BOTTS, ESQ.,

Appearing for Defendant.

The Clerk: Criminal No. 10,386, United States  
of America vs. Ilene Charles, also known as Arlene  
Charles, for trial.

Mr. Botts: Ready, your Honor.

Mr. Richardson: Ready, your Honor.

The Clerk: There is a waiver of a jury trial.

Mr. Botts: I state in open court for the purpose  
of the record that we waive a jury trial.



(Testimony of William K. Wells.)

The Court: All right. You may proceed.

Mr. Richardson: If your Honor please, I would like to make a short opening statement. In this case Mr. William K. Wells secured a search warrant on September 16, 1950, authorizing him to search the premises occupied by Ilene Charles at 3237 Nimitz Highway. Pursuant to that search warrant he went to the premises at that address on September 21, 1950, in company with some other officers. The defendant, Mrs. Charles, slammed the door when he attempted to serve the search warrant. However, they effected entry. When the officers went in they saw Mrs. Charles go to the bathroom and throw an object into the commode. They were immediately back of her, they followed her in, and out of the commode they secured three capsules of heroin, and also in the premises at two other places, two other capsules were found. Just briefly, your Honor, those are the facts we will undertake to prove.

WILLIAM K. WELLS

a witness in behalf of the Plaintiff, being duly sworn, testified as follows:

Direct Examination

By Mr. Richardson:

Q. Will you state your full name, please?

A. William K. Wells, acting district supervisor of the bureau of narcotics for the Territory of Hawaii.

(Testimony of William K. Wells.)

Q. Mr. Wells, do you know this defendant, Ilene Charles? A. I do, sir.

Q. In September of this year did you secure a search warrant to search the premises where this woman lived? A. Yes, sir.

Q. Can you point out Ilene Charles here in the courtroom?

A. That is the lady sitting on the right of Mr. Botts.

Q. Now, Mr. Wells, upon what information did you base that search warrant?

Mr. Botts: Just a moment. That is objected to as incompetent, irrelevant and immaterial. There is no attack [2\*] made upon the search warrant, your Honor. It is what turned up as a result of the search that is before the Court.

The Court: What is the materiality?

Mr. Richardson: If there is no attack on the warrant, I want to show the cause for its issuance.

The Court: All right.

Q. (By Mr. Richardson): Mr. Wells, pursuant to that search warrant—what is the date of that search warrant?

A. It was obtained on September 20th—I mean September 18th.

Mr. Botts: We make no attack on the issuance of the search warrant.

Mr. Richardson: I want Mr. Wells to tell us what happened.

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\* Page numbering appearing at top of page of original Reporter's Transcript.



(Testimony of William K. Wells.)

Mr. Botts: We are not attacking the search warrant.

Q. (By Mr. Richardson): Well, a warrant was issued. Mr. Wells, state what you did.

A. On September 21, 1950, accompanied by Lt. Alfred A. Sousa, Officer Boyd Andrade, Lowell Cain, and Charles Gerlach, we proceeded—we left the office about 12:00 o'clock noon, and we proceeded to 3237 Nimitz Highway. As we approached the rear door of the premises I saw the defendant standing—the rear door was open—I saw the defendant standing inside the hallway.

I said, "Ilene Charles, I have a search warrant for [3] your person and premises." She slammed the door on me. I then said, "Ilene Charles, you are under arrest." We had to break the door down.

Q. Who broke the door down, Mr. Wells?

A. Officer Cain. We entered the premises. I went through the front bedroom where the common-law husband, Mr. Charles, was lying in bed. A few minutes later they brought the defendant in the front room and Officer Cain produced three capsules of heroin and had the defendant sit on an ottoman. I read the search warrant to her; she accepted it. And when I looked up I saw a capsule of heroin was stuck on the ottoman. The capsule of heroin was still wet. A search of the premises was made. Agent Lowell Cain found one capsule of heroin and two hypodermic needles.

Q. Where was that found, Mr. Wells?

A. They were found underneath the sofa in the

(Testimony of William K. Wells.)

living room. Also found in the premises was one hypodermic needle and three eye-droppers and about 80 empty gelatin capsules in the bathroom.

Q. Mr. Wells, was anyone else present there at the time you raided it?

A. Her commonlaw husband, J. D. Charles, was lying in bed in the bedroom, his mother, Mrs. Charles, and Mrs. Phyllis Bohesian, and another girl by the name of Ann Beyer.

Q. Did anyone else come in while the raid was on? [4]

A. A couple of known addicts, a fellow known as Sepa was in the front bedroom, and Herbert Wilkerson came in.

Q. Is that the same Herbert Wilkerson who was tried up here recently? A. Yes.

Q. Mr. Wells, between the time you secured the warrant and the time the raid was made, did you have the place under surveillance out there?

A. I was out there with Officer Cain. We placed the premises under observation on September 13th.

Q. Did you see anybody going in and out there?

A. I saw several known addicts going in and out of the premises.

Q. People that you knew were addicts?

A. Yes, sir.

Q. Now, the capsules that were turned over to you there that night, what did you do with them?

A. On October 3, 1950, I took the evidence to Mr. G. J. Carr, U. S. Customs chemist, for analysis.

Q. Did he make a report to you of that analysis?

(Testimony of William K. Wells.)

A. On October 5th I received the evidence in a report from Mr. Carr.

Mr. Richardson: If your Honor please, I understand Mr. Botts will stipulate that if the chemist were called here to testify, he would testify that this is his report. [5]

Mr. Botts: All right.

Mr. Richardson: Which were the particular capsules found there at that time. With your consent I would like to introduce that in evidence.

Mr. Botts: All right.

Mr. Richardson: It shows that three capsules contained 4.3 grains of heroin hydrochloride; one capsule contained 1.1 grains of heroin hydrochloride; the last capsule contained 0.18 grains of heroin hydrochloride.

The Clerk: Government's Exhibit A.

(Thereupon, the document above referred to was received in evidence as U. S. Exhibit A.)

(Testimony of William K. Wells.)

## PLAINTIFF'S EXHIBIT No. A

## Report of Property

Purchased or Seized Under Narcotic and Marihuana Laws

Office of District Supervisor,

Case No. B-4204  
Defendant Ilene Charles - Arlene Charles - Aileen Charles

Honolulu 1, Hawaii, T. H.

## 1. Description of seizure.\*

October 3, 1950

Market Value

Ex. No.	No. Pkgs.	Suspected Drug	Marks or Labels	Quantity (Gr.)	Illegitimate
2	2	Capsules of Heroin	No distinctive markings	.....4.3	\$50.00
3	1	Capsule of Heroin	No distinctive markings	.....1.1	\$10.00
4	1	Capsule of Heroin	Wrapped in white cellophane paper	.....0.18	\$10.00

2. Date and place of seizure September 21, 1950—3237 Nimitz Highway, Honolulu, T. H.

3. Drugs not sent to chemist are located at Strong Room, 575 Alexander Young Building, Honolulu, T. H.

4. Remarks: Exhibits 2, 3, and 4 submitted to Mr. G. J. Carr, U. S. Customs - Chemist-in-Charge, Room 243, Federal Building, Honolulu, T. H., for analysis on October 3, 1950.

5. Rendered by /s/ WILLIAM K. WELLS,  
Narcotic Agent./s/ WILLIAM K. WELLS,  
Acting District Supervisor.

## (Testimony of William K. Wells.)

## Chemist's Report of Analysis

Total Wt. Found		Weight After Analysis	
Ex. No.	Lab. No.	Gr.	Gr.
2	444	4.3*	4.2*
3	445	1.1	1.0*
4	446	0.18	0.14

Remarks: \* Gross Weight. The capsules were smashed.

Unused portions returned to Mr. Wm. K. Wells, 10-5-50.

G. J. Carr, Chemist in Charge.

## Record of Seals

Date Sealed	Initialed by (not less than 2 persons)	Date Seals Broken	Broken by	Remarks
10-2-50	WKW & LWC	10-4-50	GJC	Analysis
GJC 10-4-50	GJC			

## 6. Other property:

## Number Name and Description of Articles

- 5 One hypodermic needle and three eye droppers.
- 6 Two boxes containing approximately eighty Gelatin Capsules.
- 7 Two hypodermic needles, one eye dropper, one burned teaspoon with no handle, and a small wad of cotton wrapped in a piece of Honolulu Star Bulletin paper dated Tuesday, September 12, 1950.

Received U. S. Customs Laboratory, Honolulu, T. H., 10:40 a.m., October 3, 1950.

Admitted January 5, 1951. /s/ G. J. CARR.



(Testimony of William K. Wells.)

Q. (By Mr. Richardson): The place where this raid was made and upon which you had this search warrant was here on this island in the City and County of Honolulu; is that right? A. Yes.

Q. Did she make any statement?

A. We took the defendant down to the vice squad office, warned her of her rights, and she refused to answer any questions.

Mr. Richardson: That is all. [6]

### Cross-Examination

By Mr. Botts:

Q. Now, Mr. Wells, that house you spoke of where you entered and searched, did you find out who the tenant was, that is, the legal tenant who rented that house? A. No, sir, I didn't.

Q. You say that J. E. Charles was there?

A. Yes, sir.

Q. He was in the house at the time?

A. He was sick, and he was lying in bed in the front bedroom.

Q. So far as you know, he and Mrs. Charles live there together; is that correct?

A. Well, that is what she told me; she had been living with him since they came here in 1946 and prior to that in San Francisco.

Q. Was he arrested?

A. No, sir. Prior to leaving the house I asked Mr. Charles, "Does these five capsules of heroin belong to you?" He said, "No, I don't know anything about it."

(Testimony of William K. Wells.)

Q. Mrs. Charles had never been arrested by you on a charge of narcotic violation?

A. According to the Honolulu Police Department she has no previous criminal record in Honolulu.

Mr. Botts: That is all. If the other officers were called, [7] I will stipulate that they would testify the same.

Mr. Richardson: I want to put on one more officer.

Mr. Botts: Go ahead and put them all on. I am not trying to short circuit you.

### LOWELL CAIN

a witness in behalf of the Plaintiff, being duly sworn, testified as follows:

#### Direct Examination

By Mr. Richardson:

Q. Will you state your full name, please, Mr. Cain?      A. Lowell Cain.

Q. What is your occupation?

A. Motor patrolman attached to the Honolulu police, assigned to Agent Wells.

Q. Were you with Mr. Wells on the day of September 21, 1950, when a raid was made on the premises of Ilene Charles?      A. I was, sir.

Q. What time did you all get out there, Mr. Cain?

A. I had been there previous, about an hour

(Testimony of Lowell Cain.)

before Mr. Well and the other members of the squad arrived. I had been on surveillance, the home known as 3237 Nimitz Highway, from across on Kam Highway.

Q. Now, when Mr. Wells got there, just tell the Court what happened. [8]

A. Well, after Mr. Wells met me on Kam Highway, we proceeded in two cars to the rear of the defendant's home and walked up to the rear of the house, and Mr. Wells and myself approached the rear door, which was open, with only the screen door being closed. At this time the defendant was seen standing in the doorway, and Mr. Wells announced himself as a Federal officer and that he had a search warrant for her person and the premises. Immediately the door was slammed by the defendant, and I broke the door in.

Q. Was anyone with you?

A. Mr. Wells entered right after me, and Andrade.

Q. Mr. Andrade; that is another officer?

A. Yes, sir.

Q. Go ahead.

A. And as we entered into the house the defendant was seen to run into what was the bathroom, and Andrade and I broke the door in and entered into the bathroom. And as we entered the bathroom she had her hand in the bowl——

Q. You mean the commode?

A. ——of the commode, and was attempting to



(Testimony of Lowell Cain.)

flush it, and it was flushing then. Officer Andrade grabbed her with the assistance of Mr. Sousa, who had entered about the same time, and as they grabbed her, I started throwing the water out of the bowl and recovered three capsules which had not been flushed down the toilet. [9]

Q. Were they still floating on the water there?

A. Well, they were moving around in the water. There was a number of other capsules, also, in the water, but I couldn't get them quick enough.

Q. But you did take three out of it?

A. Yes.

Q. Those are the capsules you later turned over to Mr. Wells?           A. Yes.

Q. Mr. Cain, you say she was running toward the bathroom?

A. Well, she ran into the bathroom. She had only three or four feet to go.

Q. You were all right behind?

A. We were, sir.

Q. Now, were you present when another capsule was found on an ottoman?

A. I was, sir, in the front room when it was found.

Q. What did you do with Mrs. Charles after the three in the bathroom were recovered?

A. Well, Officer Andrade and Lt. Sousa led her into the front room where Mr. Wells talked to her, and I stayed in the bathroom and commenced the search of the bathroom.

(Testimony of Lowell Cain.)

Q. You didn't find anything?

A. Found one hypodermic needle and three little glass [10] eye-droppers.

Q. Now, Mr. Andrade was with you all the time that you were there; is that correct?

A. Yes, sir.

Q. Is there anything else you know about it, Mr. Cain?

A. Well, nothing that I seen with my own eyes that I can testify to.

Mr. Richardson: I think that is all.

Mr. Botts: No questions.

Mr. Richardson: If your Honor please, Mr. Andrade's testimony would be entirely cumulative. Will you stipulate, Mr. Botts, that he would testify just the way Mr. Cain——

Mr. Botts: Just a moment, Mr. Cain. May I ask one question?

### Cross-Examination

By Mr. Botts:

Q. In that house how many people were living at the time; how many people at the house?

A. From the surveillance I had had on it from the previous day and other times, there was only three women that I had seen actually living there.

Q. Well, Mr. Charles lived there, didn't he?

A. Mr. Charles lived there.

Q. Did you check to see who the legal tenants were? [11]

A. No.

(Testimony of Lowell Cain.)

Q. You didn't. But at the time you entered the place there were several people there?

A. There were several people there, but they were not known to live there.

Q. They were visiting there? A. Yes, sir.

Q. As far as you know three people——

A. Three women and Mr. Charles, yes.

Mr. Botts: That is all.

Mr. Richardson: Just one question.

### Redirect Examination

By Mr. Richardson:

Q. Was Mr. Charles in bed all the time that you were there, as far as you know?

A. Yes, sir.

Mr. Richardson: That is all. That is the Government's case.

Mr. Botts: The defendant rests, your Honor. I would like to make a short statement. Can I proceed, your Honor?

The Court: Yes.

Mr. Botts: Your Honor, this woman has come into court—that is, she has facilitated these proceedings; we haven't asked to go before the Grand Jury, and I figure possibly on the showing made there is no question she had possession of the narcotics. It is a different thing entirely whether she was the owner of it. But she is charged here with possession, and we are not disputing that she had possession.

She has no criminal record. She is obviously not an addict. She has lived in the Territory for five years, and as far as the record shows has committed no offense at all. She came in here frankly, and hasn't tried to pull anything over the Court's eyes or counsel's eyes or anybody. She is legally guilty of having possession of those narcotics, but the ownership is something else again. And we submit, your Honor, she is entitled to the consideration of this Court to be given an opportunity on probation. She will certainly have nothing to do with narcotics in any manner, shape or form again. I submit that her whole conduct commends itself to your Honor's leniency, and especially the fact that she is a woman.

The Court: Any argument?

Mr. Richardson: No, sir.

The Court: Upon the uncontroverted evidence on behalf [12] of the Government, the defendant is adjudged guilty.

Is the defendant ready for sentence?

Mr. Botts: Ready, your Honor.

The Court: It is the judgment and sentence of the Court she be confined to prison for a year and a day.

Mr. Botts: Can mittimus be stayed, your Honor, for a couple of days, say until Saturday noon?

The Court: For what purpose?

Mr. Botts: For the purpose of the record may I note an exception? May a mittimus be stayed until Monday? She is under a substantial bond.

The Court: Well, the bond wouldn't be effective after sentence is pronounced.

Mr. Botts: Well, how can we handle it?

The Court: What is the purpose of the stay of mittimus? What are her obligations that would require it?

Mr. Botts: Well, she wants to talk to her friends, your Honor, and we are a little bit taken by surprise, and I would like to have an opportunity to consult with her. That is, we have come in here and put no obstacles at all in the way of getting this before the Court.

The Court: Well, I recognize that as being true, but then this woman was caught redhanded with narcotics in her possession and made an attempt to destroy the evidence, did everything that was within her capacity, according to the [13] evidence, to destroy it, and she has been shown to be guilty—and it was in a place where known addicts were assembled. This narcotics business seems to have gotten quite a bulge here in this community, and it is a very dangerous and damaging thing to a certain element of the community. I don't feel disposed to give this woman two or three days to talk matters over with her friends. They can call on her while she is in custody.

Mr. Botts: Well, would you fix some bond on an appeal?

The Court: What is the bond?

Mr. Richardson: The present bond is \$2500, your Honor.

The Court: Who is the bondsman?

Mr. Botts: Fong Hing, I believe.



The Court: Well, if you can get him to come into court here and consent——

Mr. Botts: I could have her in the Marshal's office and communicate with him quickly, if your Honor will fix a bond on appeal just for the purpose of facilitating this thing.

The Court: Will you give notice of intention to appeal?

Mr. Botts: I think I should for the record. May we give notice of intention to appeal and I will have Fong Hing come in, your Honor. I don't know what his action will be.

The Court: All right. Bond will be fixed in the same amount.

Mr. Botts: Thank you, your Honor. [14]

#### Reporter's Certificate

I, Elbert Cripps, Official Reporter, United States District Court, Honolulu, T. H., do hereby certify that the foregoing is a true and correct transcript of my shorthand notes taken in Criminal No. 10,386, United States of America vs. Ilene Charles, also known as Arlene Charles, January 5, 1951, before Hon. Delbert E. Metzger, Judge.

January 11, 1951.

/s/ ELBERT CRIPPS.

[Endorsed]: Filed January 19, 1951.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

United States of America,  
District of Hawaii—ss.

I, Wm. F. Thompson, Jr., Clerk of the United States District Court for the District of Hawaii, do hereby certify that the foregoing record on appeal in the above-entitled cause, consists of the following listed original pleadings, exhibit, and transcript of proceedings:

Information

Judgment and Commitment

Notice of Appeal

Cost Bond

Designation of Record on Appeal

United States Exhibit "A"

Transcript of Proceedings—January 5, 1951.

I further certify that included in said record on appeal is a copy of the court minutes of January 5, 1951.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court, this 19th day of January, 1951.

[Seal]      /s/ WM. F. THOMPSON, JR.,

Clerk, United States District  
Court, District of Hawaii.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO  
SUPPLEMENTAL RECORD

United States of America,  
District of Hawaii—ss.

I, Wm. F. Thompson, Jr., Clerk of the United States District Court for the District of Hawaii, do hereby certify that the foregoing supplement to record on appeal in the above-entitled cause, consists of the following:

Official Reporter's Transcript of Argument of Attorneys had on January 5, 1951.

Designation of Record on Appeal.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court this 23rd day of January, 1951.

[Seal]      /s/ WM. F. THOMPSON, JR.,  
Clerk, United States District  
Court, District of Hawaii.

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[Endorsed]: No. 12843. United States Court of Appeals for the Ninth Circuit. Ilene Charles, also known as Arlene Charles, Appellant, vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the District of Hawaii.

Filed January 29, 1951.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for the  
Ninth Circuit.



In the United States Court of Appeals  
For the Ninth Circuit

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

vs.

ILENE CHARLES, also known as ARLENE  
CHARLES,

Defendant-Appellant.

STATEMENT OF POINTS TO BE RELIED  
UPON BY DEFENDANT-APPELLANT ON  
APPEAL

Comes now Ilene Charles, also known as Arlene Charles, Defedant-Appellant, by E. J. Botts, her attorney, and hereby states that Defendant-Appellant, in taking this appeal, will rely upon the following points:

1. That the evidence adduced in the trial of the above-entitled matter was insufficient to establish the guilt of Appellant and Appellant should have been discharged by the trial court.

2. That the search of the premises occupied by Appellant and others on September 21, 1950, resulted in the finding and seizure of certain alleged narcotics. That on the trial of the above-entitled matter, the alleged drugs seized were not offered in evidence, no proof was adduced that Appellant owned or possessed said drugs, and in lieu of evidence her conviction was obtained by multiple presumptions, pyramided on each other as follows:

(a) the presumption that the narcotics found in the dwelling belonged to Appellant, (b) the presumption that they were not in or from the original stamped package, (c) the presumption that she purchased them, and (d) the presumption that they were purchased in the District of Hawaii. Competent evidence of Appellant's guilt of the charge contained in the Information being absent, the court erred in finding her guilty.

3. No facts or circumstances were developed in the trial of said cause which tended to show that the alleged narcotic drugs referred to in the Information were purchased by Appellant in the District of Hawaii, and in the absence of such facts and circumstances there was no proof of venue, and the trial court was without jurisdiction to proceed to judgment and sentence in this matter.

4. The prosecution did not put in evidence for identification and as part of its proof the alleged narcotics mentioned and described in the Information, and by reason of its failure to do so the evidence against Appellant was insufficient to support the decision and judgment herein, and Appellant should have been discharged.

5. Because of the failure of the prosecution to offer in evidence for identification and as part of its proof the narcotics mentioned and described in the Information, Appellant was entitled to the benefit of the favorable presumption that, if offered, said narcotics would have negatived rather than supported the charge in the Information, and an

order and judgment should have been entered by the trial court discharging her.

6. The prosecution failed to show that the narcotics mentioned and described in Exhibit "A" were the same narcotics alleged to have been found September 21, 1950, in the dwelling house where Appellant was arrested on said day by William K. Wells, witness for the prosecution.

By reason of said errors and other manifest errors appearing in the record designated herein, the order, judgment and sentence should be set aside.

Dated: Honolulu, T. H., this 19th day of January, 1951.

ILENE CHARLES,  
also known as  
ARLENE CHARLES,

By /s/ E. J. BOTTS,  
Her Attorney.

Receipt of Copy acknowledged.

[Endorsed]: Filed January 29, 1951.

[Title of Court of Appeals and Cause.]

DESIGNATION OF RECORD TO BE  
PRINTED ON APPEAL

Comes now the United States of America, Plaintiff-Appellee in the above-entitled cause, by Howard K. Hoddick, Acting United States Attorney for the District of Hawaii, and hereby designates for inclusion in the printed record on appeal, the following:

1. Official Reporter's Transcript of Argument of Attorneys had on January 5, 1951.
2. Designation of Record on Appeal.
3. This Designation of Record to be Printed on Appeal.

Dated: Honolulu, T. H., this 23rd day of January, 1951.

HOWARD K. HODDICK,  
Acting United States Atty.,  
District of Hawaii.

By /s/ NAT RICHARDSON, JR.,  
Assistant United States Atty.,  
District of Hawaii.

[Endorsed]: Filed January 29, 1951.

[Title of Court of Appeals and Cause.]

DESIGNATION OF RECORD TO BE  
PRINTED ON APPEAL

Comes now Ilene Charles, also known as Arlene Charles, defendant-appellant, by E. J. Botts, her attorney, and hereby designates for inclusion in the printed record on appeal, the following:

1. Information.
2. Official Reporter's Transcript of Proceedings had on January 5, 1951.
3. Plaintiff's Exhibit "A."
4. Clerk's minutes.
5. Notice of Appeal dated January 8, 1951.
6. Designation of Record on Appeal.
7. Statement of Points to be Relied Upon by Defendant-Appellant on Appeal.
8. This Designation of Record to be Printed on Appeal.

Dated: Honolulu, T. H., this 19th day of January, 1951.

ILENE CHARLES,  
also known as  
ARLENE CHARLES,

By /s/ E. J. BOTTS,  
Her Attorney.

Receipt of Copy acknowledged.

[Endorsed]: Filed January 29, 1951.

